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**FILED**  
01/06/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
43B-0349-R-2021  
Lambert, Kathryn  
23.00

MONTANA WATER COURT, YELLOWSTONE DIVISION  
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN  
BASIN 43B  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: Glenn H. Snoeyenbos; Janet Snoeyenbos

OBJECTOR: United States of America (USDA Forest Service)

NOTICE OF INTENT TO APPEAR: Trout Unlimited

**CASE 43B-0349-R-2021**  
43B 8935-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

The United States of America (USDA Forest Service) objected to this Glenn H. Snoeyenbos and Janet Snoeyenbos claim 43B 8935-00. Trout Unlimited filed a notice of intent to appear. This claim appeared in the Preliminary Decree with the following remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DIVERSION FACILITY CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

On April 29, 2022 the parties filed a Stipulation To Resolve Objections. On June 21, 2022 the Order Setting Filing Deadline was issued requesting clarification of the requested revision of an existing remark on the abstract. On October 18, 2022 the United States' Response To Court's June 21, 2022 Order was filed providing both clarification and revised remark text, and stating that the other parties consented to the revised remark text. On October 19, 2022 Trout Unlimited filed its Response confirming its consent to the revised remark text. The settlement documents are viewable in the Court's FullCourt Enterprise case management system.

#### APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

#### FINDINGS OF FACT

1. The Preliminary Decree states that the flow rate is 2.50 CFS. The flow rate should be 1.25 CFS.

The flow rate also includes the following clarification remark:

THE PARTIES' SEPTEMBER 23, 1989 STIPULATION SPECIFIES THAT THE COMBINED FLOW RATES OF CLAIMS 43B 8935-00 AND 43B 8936-00 SHALL NOT EXCEED 2.50 CFS AND THAT THE COMBINED VOLUMES OF THESE TWO CLAIMS SHALL NOT EXCEED 93.60 ACRE FEET PER YEAR.

The referenced Stipulation was signed by John R. Hill (then attorney for the United States of America (USDA Forest Service)), Glenn H. Snoeyenbos, Janet G. Snoeyenbos, Donald A. Nash (the Snoeyenbos' attorney), Robert E. Gresswell, and Ellen S. Gresswell. The Gresswells were predecessors of the Snoeyenboses and no longer have an ownership interest in this claim. As the Snoeyenboses and the United States of America (USDA

Forest Service) were parties in the 1989 Stipulation, there is no issue with these same parties making a modification to the Stipulation remark today. This remark should be moved to the volume entry on the abstract and should be modified to state:

THE PARTIES' SEPTEMBER 23, 1989 STIPULATION SPECIFIES THAT THE COMBINED VOLUMES OF CLAIMS 43B 8935-00 AND 43B 8936-00 SHALL NOT EXCEED 93.60 ACRE FEET PER YEAR.

2. The Preliminary Decree states that the point of diversion legal description is the SENWNE section 24, T9S, R8E, PARK. The legal description should be the NESWNE section 24, T9S, R8E, PARK. The point of diversion issue remark should be removed as addressed and resolved.

3. The following remark also appeared in the Preliminary Decree:

THE TIMELY FILED OBJECTION OF THE UNITED STATES OF AMERICA WAS AMENDED BY TO INCLUDE PLACE OF USE . BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

This remark provides notice of this change made during the Temporary Preliminary Decree proceedings and does not raise an unresolved issue which needs to be addressed. The remark should be removed as having served its notice purpose.

#### CONCLUSION OF LAW

The settlement filed is sufficient to contradict and overcome the prima facie claim and to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW**

**Service Via USPS Mail:**

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Janet Snoeyenbos  
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**Service Via Email:**

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**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 8935-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** GLENN H SNOEYENBOS  
42 HILLS RD  
AMHERST, MA 01002  
JANET SNOEYENBOS  
42 HILLS RD  
AMHERST, MA 01002

**Priority Date:** JUNE 1, 1893  
**Type of Historical Right:** DECREED  
**Purpose (use):** IRRIGATION  
**Irrigation Type:** FLOOD  
**\*Flow Rate:** 1.25 CFS  
**\*Volume:** 93.60 AC-FT

THE PARTIES' SEPTEMBER 23, 1989 STIPULATION SPECIFIES THAT THE COMBINED VOLUMES OF CLAIMS 43B 8935-00 AND 43B 8936-00 SHALL NOT EXCEED 93.60 ACRE FEET PER YEAR.  
THE WATER COURT HAS DETERMINED THAT A VOLUME QUANTIFICATION IS REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT

**Climatic Area:** 5 - LOW  
**\*Maximum Acres:** 8.00  
**Source Name:** EAGLE CREEK  
**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|-----------------|----------------|------------|------------|------------|---------------|
| 1         |                 | NESWNE         | 24         | 9S         | 8E         | PARK          |

**Period of Diversion:** MAY 1 TO SEPTEMBER 30  
**Diversion Means:** HEADGATE  
**Period of Use:** MAY 1 TO SEPTEMBER 30  
**\*Place of Use:**

| <u>ID</u>     | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|---------------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1             | 7.00         |                 | S2SENE         | 23         | 9S         | 8E         | PARK          |
| 2             | 1.00         |                 | NENESE         | 23         | 9S         | 8E         | PARK          |
| <b>Total:</b> | 8.00         |                 |                |            |            |            |               |

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

8935-00

8936-00